

This Opinion is Not a  
Precedent of the TTAB

Mailed: November 6, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Total Tax Experience, LLC*

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Serial No. 90502524

Ticora E. Davis of The Creator's Law Firm  
for Total Tax Experience, LLC.

Tasha Pulvermacher, Trademark Examining Attorney, Law Office 125,  
Robin Mittler, Managing Attorney.

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Before Kuhlke, Thurmon and Elgin,  
Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Total Tax Experience, LLC (“Applicant”) seeks registration on the Principal Register for the mark THE TAX COP (TAX disclaimed) in standard characters for goods ultimately identified as “A series of printed books, printed articles, printed handouts and printed worksheets in the field of tax planning, tax strategy, and tax relief; Printed workbooks directed to tax planning, tax strategy, and tax relief;

Printed worksheets in the field of tax planning, tax strategy, and tax relief,” in International Class 16.<sup>1</sup>

The Trademark Examining Attorney refused registration of Applicant’s mark in each application under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark, when used in connection with the identified goods, so resembles the registered mark  for “printed sheets or booklets,” in International Class 16, as to be likely to cause confusion.<sup>2</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request, the appeal resumed and briefs were filed. We reverse the refusal to register.

#### I. Likelihood of Confusion

When the question is likelihood of confusion, we analyze the facts as they relate to the relevant factors set out in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). See also *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We consider each *DuPont* factor for which there is evidence and argument. See *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019).

In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. See *In re Chatam Int’l*

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<sup>1</sup> Application Serial No. 90502524, filed on February 1, 2021 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging an intention to use the mark in commerce.

<sup>2</sup> Registration No. 1073989, issued on the Principal Register on September 27, 1977, renewed.

*Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); *see also In re i.am.symbolic, LLC*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all [*DuPont*] factors for which there is record evidence but ‘may focus . . . on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

A. Relatedness of the Goods, Trade Channels and Classes of Consumers

When considering the goods, trade channels and classes of consumers, we must make our determinations based on the goods as they are identified in the application and cited registration. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997). *See also Stone Lion Cap. Partners, L.P. v. Lion Cap. LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *Octocom Sys., Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). The issue is not whether the goods will be confused with each other, but rather whether the public will be confused as to their source. *See Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”).

The identification of “printed sheets or booklets” in the registration is not limited by subject matter; therefore, they encompass Applicant’s goods that are limited to a specific subject matter. As such, Registrant’s identified goods are legally identical to the “printed handouts and printed worksheets in the field of tax planning, tax strategy and tax relief” identified in the application.<sup>3</sup> It is sufficient for a finding of likelihood of confusion if relatedness is established for any item encompassed by the identification of goods within a particular class in the application. *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335, 209 USPQ 986 (CCPA 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014).

Moreover, we presume identical goods move in the same channels of trade and are available to the same classes of customers for such goods—here, the overlapping general consumers are those who use or purchase printed handouts and worksheets in the field of tax planning. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (“[I]t is well established that, absent restrictions in the application and registration, [identical] goods and services are presumed to travel in the same channels of trade to the same class of purchasers.”) (internal quotation marks and

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<sup>3</sup> Applicant’s arguments about Registrant’s actual use are not persuasive. We must make our determination based on the identification in the registration not based on a registrant’s actual use as shown through extrinsic evidence. *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018); *Stone Lion*, 110 USPQ2d at 1162 (Board must “give full sweep” to an identification of goods [or services] regardless of registrant’s actual business). A registration enjoys presumptions under Section 7, 15 U.S.C. § 1057, including coverage for the full scope of its goods as identified in the registration. *See In re Bercut-Vanderboort & Co.*, 229 USPQ 763, 764-765 (TTAB 1986) (“[T]he question of likelihood of confusion must be determined by an analysis of the marks as applied to the goods [and services] identified in the application vis-à-vis the goods [and services] recited in the registration, rather than what extrinsic evidence shows those goods to be.”).

citation omitted). As discussed above, the marks cover legally identical goods, and therefore this presumption applies.

As to the conditions of purchase, Applicant argues without evidentiary support “the least sophisticated purchaser of a book or workbook on the subject of taxes would perform at least some research prior to making such purchase, given that the tax planning and strategy can have immense financial consequences for the user, both personally and professionally...” 6 TTABVUE 14.<sup>4</sup> We agree that such goods would be obtained and used with some care, at least higher than an impulse purchase. However, Applicant’s argument that its services “require specialized knowledge of United States tax law and regulations” and the services are “provided by Enrolled Agents, which requires passing a licensing exam and applying for enrollment through the IRS website” *id.*, are not relevant to the **goods** at issue in this proceeding.

The evidence is sufficient to show that Applicant’s and Registrant’s goods are legally identical and are presumed to travel in the same channels of trade and be offered to the same classes of consumers. In view thereof, these factors weigh in favor of likely confusion. The conditions of sale of these goods by their nature are not impulse purchases but there is no evidence to show a heightened care other than the ordinary purchaser looking for information on taxes. We find that factor to be neutral or at most slightly reducing the risk of confusion.

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<sup>4</sup> Citations to briefs refer to TTABVUE, the Board’s online docketing system. The number preceding TTABVUE corresponds to the docket entry number; the number(s) following TTABVUE refer to the page number(s) of that particular docket entry. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014). Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system.

B. Similarity/Dissimilarity of the Marks

We compare the marks THE TAX COP and the cited mark  in their entireties as to “appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s*, 126 USPQ2d 1742, 1746 (TTAB 2018), *aff’d mem.*, 777 Fed. Appx. 516 (Fed. Cir. 2019) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)).

The Examining Attorney argues that the marks are similar in that they share a dominant element “COP,” in view of the disclaimer of TAX from Applicant’s mark and the dominance of the word over the design in Registrant’s mark. The Examining Attorney finds that the common word COP creates “the same overall commercial impression of the police” and the plural form of the word COP in the registered mark COPS does not create a meaningful dissimilarity “because the plural form of what is the dominant part of the applied-for mark is considered virtually the same mark.” 8 TTABVUE 4. As discussed below, we find Applicant’s mark THE TAX COP presents a very different commercial impression and has a different connotation from Registrant’s  mark.

We begin by observing that the respective marks have a different appearance. Applicant’s mark includes other wording and, although we must also consider presentations of Applicant’s standard character mark that would include the

stylization in Registrant's mark, *Citigroup Inc. v. Cap. City Bank Grp.*, 637 F.3d 1344, 98 USPQ2d 1253, 1258-9 (Fed. Cir. 2011) (registration of a mark in standard characters is not limited to a particular display), the design element in Registrant's mark provides another point of distinction in appearance between the marks. The marks also sound different in view of the additional wording in Applicant's mark.

While these differences are important, we find that the main point of distinction between the marks is their difference in connotation and overall commercial impression. Applicant's mark connotes tax issues and the word "cop" appears to be used more euphemistically indicating authority and toughness. In addition, the structure of Applicant's mark in its entirety alludes to a specific character or individual. Although, in general, the word "the" does not have trademark significance, here, because it proceeds the modifier "tax," which in turn proceeds the noun "cop" this combination and structure connotes an individual. By contrast, Registrant's mark does not have any meaning related to tax and, because we cannot consider its actual use as an acronym for the wording California Occupational Preference System,<sup>5</sup> the word COPS simply connotes cops in general, i.e., police officers.<sup>6</sup> Moreover, the words "tax" and "cop" are somewhat incongruous terms, each have meanings that do not directly overlap resulting in some complexity to the word

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<sup>5</sup> February 28, 2022 Response, TSDR 9, 25, 27; December 26, 2022 Request for Reconsideration, TSDR 11-14.

<sup>6</sup> Dictionary.com based on THE RANDOM HOUSE UNABRIDGED DICTIONARY (2023). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

“cop”; the same is not true of “cops.” As to overall commercial impression, we find these connotative differences and the difference in structure in the marks when we view them in their entirety, THE TAX COP a phrase versus a single word COPS, present very different commercial impressions.

We find the dissimilarities in the marks — considered in their entirety — outweigh their similarities. In view thereof, the dissimilarity of these marks weighs heavily in favor of a finding of no likelihood of confusion.

### C. Conclusion

In balancing the relevant factors, we find the differences between the marks — in particular given the difference in the connotations and overall commercial impressions — sufficient to avoid likely confusion despite the legally identical goods and trade channels. “No mechanical rule determines likelihood of confusion, and each case requires weighing of the facts and circumstances of the particular mark.” *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010) (citing *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992)); *see also Oakville Hills Cellar, Inc. v. Georgallis Holdings, LLC*, 826 F.3d 1376, 119 USPQ2d 1286, 1290 (Fed. Cir. 2016) (MAYA not confusingly similar to MAYARI) (quoting *Kellogg Co. v. Pack'em Enters.*, 951 F.2d 330, 21 USPQ2d 1142, 1144-45 (Fed. Cir. 1991) (“We know of no reason why, in a particular case, a single *duPont* factor may not be dispositive”)).

**Decision:** The refusal to register Applicant’s mark under Trademark Act Section 2(d) is reversed.